

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021070894

ORDER GRANTING MOTION FOR STAY PUT

AUGUST 03, 2021

On July 28, 2021, Student filed a motion for stay put. On August 2, 2021, District filed a statement of non-opposition to the motion.

Student, 5 years old, is nonverbal and has behavior needs related to his special education eligibility of autism. Student has Type 1 Diabetes, requiring a continuous glucose monitoring device. At Student's initial April 19, 2019 individualized education program meeting, referred to as an IEP, a dispute arose regarding the provision of designated, trained, adult personnel to manage Student's Diabetes related needs during the school day. The parties resolved the dispute through an August 13, 2019 Settlement Agreement, wherein Los Angeles agreed to provide Student with a health care assistant for up to 1350 minutes, weekly.

Subsequently, Los Angeles offered 1350 minutes of health and nursing services during the regular 2019-2020 school year and 2020 extended school year, in IEPs dated September 12, 2019 and November 7, 2019 IEP. Student's November 7, 2019 identified health and nursing services as a health care assistant to attend to Student's continuous glucose monitor, blood glucose testing, hypoglycemia protocol, Ketone testing, and Glucagon injection and a licensed nursing provider to assist with Student's insulin administration at breakfast, morning snack, and lunch time. Parent agreed to the IEPs.

On February 20, 2020, Los Angeles held an annual IEP meeting offering a change in the health and nursing services provider and changing the length of time for services during the regular and extended school year. Los Angeles proposed using trained adult personnel, rather than a health care assistant. Parent did not agree to the IEP and filed a request for due process hearing, in part, disputing a change in personnel for the provision of health and nursing services.

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed.Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the last agreed upon and implemented individualized educational program, called IEP, placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs. tit. 5, § 3042, subd. (a).)

Los Angeles' statement of non-opposition to Student's motion for stay-put does not contain a sworn declaration pledging that Student's program and services will continue throughout the pendency of the due process proceedings. Los Angeles, however, does not dispute Parent's declaration or the allegations contained in Student's stay-put motion.

Student is entitled to stay put under the last agreed upon and implemented November 7, 2019 IEP. Student's November 7, 2019 IEP requires provision of health and nursing services for up to 1,350 minutes per week during the regular and extended school year. Health and nursing services consist of a health care assistant to attend to Student's continuous glucose monitor and Diabetes related needs and a licensed nursing provider to assist with Student's insulin administration at breakfast, morning snack, and lunch time.

The motion for stay put is granted.

IT IS SO ORDERED.

Cole Dalton

Cole Dalton

Administrative Law Judge

Office of Administrative Hearings